

In the Matter of Merchant Mariner's Document No. Z-403117 and all other Seaman Documents  
Issued to: CLYDE CLAUDE CLARK

DECISION OF THE COMMANDANT  
UNITED STATES COAST GUARD

1150

CLYDE CLAUDE CLARK

This appeal has been taken in accordance with Title 46 United States Code 239(g) and Title 46 Code of Federal Regulations 137.11-1.

By order dated 9 June 1959, an Examiner of the United States Coast Guard at New York, New York suspended Appellant's seaman documents upon finding him guilty of misconduct. The specifications alleges that while serving as deck maintenanceman on board the United States SS FLYING FOAM under authority of the document above described, on or about 6 May 1959, Appellant assaulted and battered the ship's Boatswain.

Appellant was served with the charge sheet on 19 May and appeared at the hearing on 27 May as directed. The proceeding was adjourned until 1 June for Appellant to obtain counsel. On 1 June, Appellant neither appeared nor was he represented by counsel. The Examiner entered a plea of not guilty on behalf of Appellant and conducted the hearing in absentia as provided for by the regulations.

The Investigating Officer introduced in evidence the testimony of Boatswain Godfrey and an entry in the ship's Official Logbook concerning the incident. Appellant's reply to the entry was that he had been provoked by the Boatswain and the latter had previously struck Appellant.

After considering the evidence, the Examiner rendered the decision in which he concluded that the charge and specification had been proved. The Examiner entered an order suspending all documents, issued to Appellant, for a period of twelve months outright plus twelve months on probation for a period of twelve months.

FINDINGS OF FACT

On 6 May 1959, Appellant was serving as deck maintenanceman on board the United States SS FLYING FOAM and acting under authority of his Merchant Mariner's Document No. Z-403117 while the ship was in the port of Bremerhaven, Germany. In this capacity, Appellant was subject to the authority of the Boatswain.

While preparing to get underway on this date, Appellant was operating a deck winch when

told by the Boatswain to stop the winch. Since Appellant apparently did not hear the Boatswain because of the noise on deck, the Boatswain put his hand on Appellant's hand, which was on the operating lever, and pushed forward until the lever was in neutral position. The Boatswain pressed the button to cut off the electric power to the winch and then walked away. Appellant followed behind the Boatswain and said something to the effect that the Boatswain had pushed Appellant. When the Boatswain heard this and turned around to face Appellant, he immediately struck Boatswain on the chin. The latter fell backward, struck his head and was unconscious for approximately a half hour.

As a result of this incident, the Boatswain was hospitalized for a week at Bremerhaven and later in the United States. He was still an outpatient when he testified at the hearing on 1 June 1959.

Appellant's prior record consists of suspensions in 1946 and 1957 for an assault on each occasion, in addition to other offenses.

#### BASES OF APPEAL

This appeal has been taken from the order imposed by the Examiner. Appellant states that his statement to the Investigating Officer was not presented at the hearing and Appellant was misinformed as to the second date set for the hearing. Appellant adds that the Boatswain had invited Appellant to fight several times prior to this incident but Appellant had refused to do so.

#### OPINION

The record shows that the hearing was adjourned until 1 June and that Appellant stated he would be present on this date. Hence, the failure of Appellant to appear and present evidence in defense was his fault alone.

The evidence presented indicates that the only immediate provocation was when the Boatswain stopped the winch which Appellant was operating. Appellant also contends that there had been prior difficulties between the two seamen. Neither of these factors in any way justified the surprise assault and battery upon the Boatswain.

I agree with the Examiner that, considering the circumstances of this case and Appellant's prior record of two assaults, the suspension imposed is appropriate.

#### ORDER

The order of the Examiner dated at New York, New York, on 9 June 1959, is AFFIRMED.

A.C. Richmond  
Vice Admiral, United States Coast Guard  
Commandant

Dated at Washington, D. C., this 15th day of March 1960.